

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Benjamin Salk	Team: Team # 5	CCRB Case #: 200903497	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 03/06/2009 4:01 PM	Location of Incident: Van Siclen Avenue and Hegeman Avenue and outside the 75th Precinct stationhouse	Precinct: 75	18 Mo. SOL 9/6/2010	EO SOL 9/6/2010	
Date/Time CV Reported Mon, 03/09/2009 1:33 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/09/2009 1:33 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM William Tergesen	16086	946316	075 PCT
2. POM Joseph Swickicki	21546	947528	075 PCT
3. POM David Siciliano	19558	931218	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Christop Barbieri	00210	929679	075 PCT
2. POM David Pellingra	21964	946703	075 PCT
3. POF Avion Daniel	10948	946893	075 PCT
4. SGT Thomas Ormond	03265	920681	075 PCT
5. POM Christophe Dalto	05804	945641	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM William Tergesen	Abuse: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen stopped § 87(2)(b)	
B.POM Joseph Swickicki	Abuse: At Van Siclen and Hegeman Avenues in Brooklyn, PO Joseph Swickicki stopped § 87(2)(b)	
C.POM William Tergesen	Discourtesy: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen spoke obscenely and/or rudely to § 87(2)(b)	
D.POM David Siciliano	Force: Outside the 75th Precinct stationhouse, PO David Siciliano used physical force against § 87(2)(b)	
E.POM William Tergesen	Force: Outside the 75th Precinct stationhouse, PO William Tergesen used physical force against § 87(2)(b)	

Case Summary

On March 9, 2009, § 87(2)(b) and her son § 87(2)(b) filed this complaint by phone with the CCRB, regarding an incident involving § 87(2)(b) which § 87(2)(b) did not witness. On March 6, 2009, at 4:01 p.m., § 87(2)(b) was stopped by PO William Tergesen and PO Joseph Swicicki at Van Siclen Avenue and Hegeman Avenue in Brooklyn, and was placed under arrest for § 87(2)(b). The following allegations arose:

- **Allegation A – Abuse of Authority: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen stopped § 87(2)(b)**
- **Allegation B – Abuse of Authority: At Van Siclen and Hegeman Avenues in Brooklyn, PO Joseph Swicicki stopped § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)
- **Allegation C – Discourtesy: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen spoke obscenely and/or rudely to § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)
- **Allegation D – Force: Outside the 75th Precinct stationhouse, PO David Siciliano used physical force against § 87(2)(b)**
- **Allegation E – Force: Outside the 75th Precinct stationhouse, PO William Tergesen used physical force against § 87(2)(b) § 87(2)(g)**
§ 87(2)(b)
§ 87(2)(b)

Results of Investigation

Civilian Statements:

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old black male standing 5'8" and weighing 165 pounds with black hair and black eyes. § 87(2)(b)

Phone Statement (encl. 4) and CCRB Testimony (encl. 5)

§ 87(2)(b) gave a statement over the phone on March 12, 2009, and was interviewed at the CCRB on March 25, 2009.

On March 6, 2009, between 3:30 and 4:00 p.m., § 87(2)(b) exited his building, located at § 87(2)(b) in Brooklyn. He was wearing a brown jacket, which was open because it was warm out, with a T-shirt underneath, and jeans. He was carrying nothing and was alone. He went directly to a Jamaican restaurant located on Hegeman Avenue, § 87(2)(b). He noticed two uniformed officers, one whom he identified as PO William Tergesen and the second of whom the CCRB identified as PO Joseph Swicicki, standing across the street. § 87(2)(b) later read PO Tergesen's name from his uniform, and described him as a white male about 5'8", slightly stocky, with short dark blonde or light brown hair, in his late 20s or early 30s. He described PO Swicicki as similar but slightly taller and slimmer. They were on foot, stopping passing cars.

§ 87(2)(b) went inside the restaurant, where he met a friend named § 87(2)(b) who lives in § 87(2)(b)'s building. § 87(2)(b) works in the restaurant and was doing construction work inside. The front of the restaurant has a large glass window, which § 87(2)(b)

stood close to. He and § 87(2)(b) had a conversation but had no physical contact.

Almost immediately, PO Tergesen and PO Swicicki ran across the street to the restaurant. When they arrived, they spoke to § 87(2)(b) through the window and told him to open the door. § 87(2)(b) immediately did so. PO Tergesen said, “Get the fuck out of the store.” He walked outside and both officers pushed him against the outside of the door. § 87(2)(b) voluntarily put his hands in the air. The officers turned him around and he placed his hands on the side of the building. Both officers placed their hands inside all of § 87(2)(b)’s jacket pockets. They never frisked him. § 87(2)(b) had not said anything to this point, but now said, “Why are you searching me, what’s the ‘reasonable doubt?’” PO Tergesen said, “Shut the fuck up, you don’t know your rights and you don’t have any rights.” PO Swicicki, who never used profanity, said to § 87(2)(b) “Take it easy, man.” § 87(2)(b) asked why he was being searched and said he wanted to speak to a sergeant. PO Tergesen repeatedly told him to “shut the fuck up.”

§ 87(2)(b) accidentally spit a small amount of saliva in PO Tergesen’s direction. PO Tergesen said, “Oh, motherfucker, you spit on me.” Several people came outside and began watching, which seemed to interrupt the officers, who ceased searching § 87(2)(b). They placed him in handcuffs as a crowd of about twenty people gathered to watch. The officers told § 87(2)(b) he was under arrest and he put his hands behind his back without being asked.

A marked van and two patrol cars arrived. The van was driven by an officer identified by NYPD testimony as PO David Siciliano. § 87(2)(b) was placed into the rear of the van. No other prisoners were in the van with him. A black female officer in eyeglasses, identified by the CCRB as PO Avion Daniel, was in the front passenger seat, and PO Swicicki also returned to the stationhouse in the van.

The van parked in the rear of the stationhouse, and the two patrol cars which had been on the scene arrived at around the same time. PO Siciliano exited, walked around, and opened the rear door near where § 87(2)(b) was seated. He asked § 87(2)(b) what had happened and § 87(2)(b) began to explain the incident. While he was talking, PO Siciliano grabbed him by the back of his neck, pulled his head down and forward into the seat in front of him. While holding § 87(2)(b)’s head down, PO Siciliano punched him repeatedly with a closed fist in the back of his head and neck continuously for thirty seconds. Meanwhile, he told § 87(2)(b) “Those are my guys, you spit on one of my guys.” PO Tergesen, who had walked up, said, “Yeah,” and also repeatedly punched § 87(2)(b) in the back of his head. § 87(2)(b) repeatedly said, “Stop, now,” and was screaming. PO Siciliano pulled a rosary that was around § 87(2)(b)’s neck until it broke, scattering beads everywhere in the van. The officers stopped striking § 87(2)(b) after about thirty seconds. He was then brought inside and his arrest was processed in an otherwise normal fashion.

§ 87(2)(b) suffered bruises and swelling to the back of his head and his right ear. He did not seek medical attention because it would delay his arrest processing, and never sought medical attention later. He declined to sign a medical release form at the CCRB because he believed that the medical screening he was given before his arraignment was too superficial for his injuries to be documented. They were no longer evident at his CCRB appearance.

Arrest Photo

§ 87(2)(b) has no apparent injuries in his arrest photograph (encl. 6).

Attempts to Contact Civilians

§ 87(2)(b) provided an address at which § 87(2)(b) could be reached but no phone number. Two letters were mailed to § 87(2)(b) at this address, and were not returned as undeliverable. One potential phone number was recovered for this address via a White Pages search, and voicemails were left at that number. No one responded to these calls and it remains unknown if the number is actually correct for § 87(2)(b) who has not contacted the CCRB.

NYPD Statements:

Subject Officer: PO WILLIAM TERGESEN

- *PO Tergesen is a § 87(2)(b)-old white male standing 5'7" and weighing 175 pounds, with brown hair and hazel eyes.*
- *On the incident date, he worked from 11:30 a.m. to 8:05 p.m. assigned to a footpost on Hegeman Avenue. He was dressed in uniform and partnered with PO Joseph Swicicki.*

Memo Book (encl. 7)

PO Tergesen's memo book indicates that at 3:40 p.m., he had one male stopped for criminal possession of a weapon and criminal possession of a controlled substance, at the corner of Hegeman and Van Siclen Avenues. At 4:05 p.m., he had § 87(2)(b) under arrest for § 87(2)(b) § 87(2)(b) resisting arrest and § 87(2)(b). Following the above, he had a delayed entry indicating he arrived at the 75th Precinct stationhouse at 3:50 p.m. He began processing the arrest at 4:57 p.m. and arrived at § 87(2)(b) at 7:05 p.m. He returned to the stationhouse at 9:00 p.m.

Complaint and Arrest Reports (encl. 8)

PO Tergesen completed these reports, which indicate that at 3:40 p.m., at Hegeman and Van Siclen Avenues, § 87(2)(b) cursed and yelled in public, causing public alarm and causing a crowd to form. When officers attempted to handcuff him, he flailed his arms and pushed officers to prevent arrest. When handcuffed, § 87(2)(b) spit on an officer's face and kicked an officer in the right leg, causing a contusion.

Criminal Court Complaint (encl. 9)

PO Tergesen provided a criminal court complaint, which was consistent with his later statements. He quoted § 87(2)(b) as saying to him, "Fuck you, go away," and, later, "Fuck you, I have AIDS."

Line of Duty Paperwork (encl. 10)

In PO Tergesen's line of duty paperwork, he explains that his injury was sustained when § 87(2)(b) kicked him several times in his right knee while trying to place him in a department vehicle. § 87(2)(b) also spit on his face and said, "I hope you get AIDS."

CCRB Testimony (encl. 11)

PO Tergesen was interviewed at the CCRB on August 11, 2009.

On the afternoon of March 5, 2009, PO Tergesen and PO Swicicki were working a footpost and were standing on the northwest corner of Hegeman and Van Siclen Avenues, Brooklyn. PO Tergesen first observed § 87(2)(b) exiting § 87(2)(b). PO Tergesen could not remember if § 87(2)(b) was accompanied by anyone or what he was wearing, but he could see § 87(2)(b) clearly.

§ 87(2)(b) appeared to notice the officers, then used one or both hands to shift or adjust his right front pants pocket. There appeared to be a bulge at that location in his pants pocket, which PO Tergesen described as L-shaped. When asked to articulate its size, he could say only that it was consistent with the size of a handgun. Nothing was protruding from the pocket. PO Tergesen did not remember anything else remarkable about § 87(2)(b)'s actions to this point in the encounter and nothing else roused his suspicion. He did not remember § 87(2)(b) interacting with anyone.

§ 87(2)(b) walked eastbound on Hegeman Avenue. PO Tergesen and PO Swicicki discussed § 87(2)(b) and agreed that they thought he had a weapon. They mutually decided to

approach him, and did so. § 87(2)(b) by now was at the southeast corner of Hegeman and Van Siclen Avenues. When they approached him, PO Tergesen asked him to “stop for one second,” and asked what he had in his pocket. PO Tergesen initially said that § 87(2)(b) began “carrying on and causing a scene,” but on further questioning, he indicated that § 87(2)(b) did not respond to his question, and instead immediately entered and locked himself in a nearby restaurant.

This restaurant was very small, about ten by ten feet, and § 87(2)(b) was visible through a large window. § 87(2)(b) went behind a counter and yelled to another person inside who PO Tergesen identified (when presented with a list of potential witnesses to the incident) as § 87(2)(b) based on their prior interactions (non-criminal in nature). No one else was in the restaurant. § 87(2)(b) seemed “enraged” at this point and was cursing, but PO Tergesen could not hear specifically what he said to § 87(2)(b). The officers told them to “open the door” and § 87(2)(b) did so immediately. § 87(2)(b) was yelling and swinging his closed fists as the officers approached him inside the store.

PO Tergesen believed he had probable cause to arrest § 87(2)(b) for disorderly conduct at this point. He noted that around 30-40 people outside whose attention was attracted by § 87(2)(b)'s irate behavior and yelling. The crowd began yelling unknown things. Inside the restaurant, both officers grabbed § 87(2)(b) somewhere on his upper body and dragged him outside, as he flailed his arms and attempted to get away. The officers did not call for backup at this point. Outside the store, the two officers tried to get § 87(2)(b) in cuffs, as he continued to resist by moving his arms and legs. The officers pushed him against the store and pulled his arms backward, then placed the handcuffs on him. After he was in cuffs, the officers frisked § 87(2)(b) but did not locate any contraband. There was a cell phone and other miscellaneous objects in the area where the bulge had been located.

PO Tergesen could not recall if he or PO Swicicki told § 87(2)(b) to “get the fuck out” of the restaurant. He denied telling § 87(2)(b) to “shut the fuck up” or hearing PO Swicicki say this.

A van responded to transport § 87(2)(b). PO Tergesen did not remember who or how many officers were in the van. § 87(2)(b) continued to resist, as PO Tergesen and PO Swicicki tried to place him into the backseat of the van. § 87(2)(b) was facing toward the officers, entering the van backward, when he kicked PO Tergesen in his kneecap once. PO Tergesen could not remember if it was his left or right knee. § 87(2)(b) also spit on PO Tergesen's face and upper chest at this time.

PO Tergesen returned to the stationhouse in another car, driven by officers he could not recall. He did not remember if PO Swicicki also returned. PO Tergesen's car arrived at the stationhouse immediately after the van containing § 87(2)(b). § 87(2)(b) was still inside when PO Tergesen arrived, and he appeared to be kicking the van's window. PO Tergesen, acting alone, dragged § 87(2)(b) from the van, by pulling him on his legs initially, and then on his arms when he could reach them. § 87(2)(b) tried to resist PO Tergesen's efforts and continued to yell unknown statements. No other officer ever touched or spoke to § 87(2)(b) and no officers were in the rear of the van with him that PO Tergesen saw. § 87(2)(b) never appeared injured. PO Tergesen refused medical attention for contusions to his knee, but was transported to § 87(2)(b) for treatment because § 87(2)(b) spit on him.

Subject Officer: PO JOSEPH SWICICKI

- PO Swicicki is a § 87(2)(b)-old white male standing 6'0" and weighing 190 pounds, with brown hair and hazel eyes.
- On the incident date he worked from 11:30 a.m. to 8:05 p.m., assigned to a footpost on Hegeman Avenue with PO Tergesen. He was dressed in uniform.

Memo Book (encl. 12)

PO Swicicki's memo book indicates that at 3:40 p.m., he had one male stopped for

criminal possession of a weapon and acting as a lookout, at Van Siclen and Hegeman. The male spit on and kicked PO Tergesen and was arrested for § 87(2)(b). At 4:10 p.m., PO Swicicki resumed patrol.

Stop and Frisk Report (encl. 13)

PO Swicicki prepared a stop and frisk report for § 87(2)(b) which indicates § 87(2)(b) was stopped on the sidewalk at Van Siclen and Hegeman Avenues. The report indicates the officers observed § 87(2)(b) for “0.02 minutes” before approaching him on suspicion of criminal possession of a weapon. The circumstances leading to the stop were that § 87(2)(b) took actions indicative of acting as a lookout, made furtive movements, had a suspicious bulge that was caused by a cell phone. Additional factors were that the time of the day and week was corresponding to criminal activity and that § 87(2)(b) was associating with persons known for their criminal activity. He was frisked because he made verbal threats, refused to comply with the officers’ directions, made furtive movements, and had a cell phone. The report indicates § 87(2)(b) said, “Fuck you, I’ll bite your ear off, I’ll spit on you, I have AIDS.”

AIDED and Line of Duty Witness Statements (encl. 14)

PO Swicicki prepared an AIDED form regarding PO Tergesen’s injuries. The statements are consistent and indicate that a prisoner spit on PO Tergesen’s face and kicked him in the right knee, causing a contusion.

CCRB Testimony (encl. 15)

PO Swicicki was interviewed at the CCRB on July 22, 2009. § 87(2)(g)

PO Swicicki stated that he and PO Tergesen were observing a group of around four or five individuals standing on the corner of Hegeman and Van Siclen Avenues, which included § 87(2)(b). The members of the group were known for being involved in prior drug activity. PO Swicicki could only identify one of them as § 87(2)(b) whom he cited as a “gun recidivist” who has been arrested for weapon possession in the past and is also involved in drug activity. The officers watched the group for around five minutes. During this time, § 87(2)(b) along with others in the group stood around, talking, and also variously entered and exited § 87(2)(b), a residential building. This activity signified possible involvement in a weapon-related crime to PO Swicicki, because buildings in the area are sometimes used as places to store weapons. He suspected § 87(2)(b) of having a weapon specifically because he was engaged in these activities and interacting with § 87(2)(b). PO Swicicki never observed any objects in the hands of § 87(2)(b) or anyone else. He did not articulate to the CCRB that he ever noticed a suspicious bulge on § 87(2)(b)’s body or that § 87(2)(b) made any suspicious movement.

After the officers observed for around five minutes, § 87(2)(b) alone, entered an abandoned commercial storefront which was being renovated. § 87(2)(b) shut and locked the door behind him. He remained visible inside through a window. § 87(2)(b) looked around in a manner that seemed suspicious. When asked to elaborate, PO Swicicki described § 87(2)(b)’s actions at this point as “just hanging out” in the store, which made him think that § 87(2)(b) was waiting for the officers to leave. The rest of the group that § 87(2)(b) had been seen with was still standing on the corner, around 15 feet away. After watching § 87(2)(b) for five minutes, PO Swicicki and PO Tergesen mutually decided to approach and talk to § 87(2)(b). When asked what crime he suspected § 87(2)(b) of, PO Swicicki said he thought § 87(2)(b) either had a weapon or drugs, because he was “very nervous looking” and “pacing and looking back and forth inside the store.” § 87(2)(b) never appeared to change his actions or demeanor specifically in response to noticing the officers.

The officers approached the store and asked § 87(2)(b) to open the door. § 87(2)(b) refused, while yelling profanity at them through the window and stating that they were harassing

him. The officers repeatedly asked him to open the door for two or three minutes, at which time § 87(2)(b) did finally open it. Neither officer used profanity.

§ 87(2)(b) came out of the store and continued to curse and scream at the officers. § 87(2)(b)'s group of acquaintances on the corner (including § 87(2)(b) meanwhile, began to walk toward the officers. Because the officers were now outnumbered, and particularly because of § 87(2)(b) history, they feared for their safety and PO Tergesen called for backup. Initially, PO Swicki indicated, the officers had merely intended to question § 87(2)(b) about his actions. They never did so, however, because § 87(2)(b)'s yelling and actions attracted a crowd that grew to about 30 people. As a result, PO Tergesen decided to arrest § 87(2)(b) for § 87(2)(b). The officers did not frisk or search § 87(2)(b) before cuffing him, and were unable to do so at the scene even after he was cuffed because the crowd interrupted them. § 87(2)(b) resisted being cuffed by turning his body around and pulling his arms from the officers. PO Swicki pushed his body against the storefront window and held him facing away from the officers while PO Tergesen handcuffed him. § 87(2)(b) became increasingly agitated, and turned his head toward the officers as though he intended to spit at them, though he did not do so at this point.

Backup arrived within 30 seconds to a minute, and PO Tergesen and PO Swicki placed § 87(2)(b) in a van that arrived. § 87(2)(b) first kicked PO Tergesen in his knee and then spit on him. He added that § 87(2)(b) made comments indicating that he had AIDS and other diseases.

PO Swicki and PO Tergesen returned to the stationhouse in two separate patrol cars. Neither officer went in the van with § 87(2)(b) and PO Swicki could not identify the other officers in either patrol car. PO Swicki never saw § 87(2)(b) outside the stationhouse, and may have seen him briefly inside the stationhouse but could not remember. PO Swicki never became aware of any physical force used or allegedly used against § 87(2)(b) at or outside the police station.

Subject Officer: PO DAVID SICILIANO

- *PO Siciliano is a § 87(2)(b)-old white male standing 6'0" and weighing 165 pounds, with brown hair and brown eyes.*
- *On the incident date, he worked from 11:30 a.m. to 8:05 p.m., assigned to training auto in a marked van, with PO Pellingra and PO Daniel. He was dressed in uniform.*

Memo Book (encl. 15)

PO Siciliano's memo book indicates at 3:35 p.m., he responded to a request for assistance at Van Siclen and Hegeman Avenues. At 4:01 p.m., one arrest was made by footpost #5 (PO Tergesen and PO Swicki's post).

CCRB Testimony (encl. 16)

PO Siciliano was interviewed at the CCRB on August 24, 2009.

PO Siciliano, PO Pellingra, and PO Daniel responded to the request for assistance by PO Tergesen and PO Swicki. When they arrived at Van Siclen and Hegeman Avenues, § 87(2)(b) was in handcuffs and standing in front of a store. § 87(2)(b) was moving his body and kicking his legs, while PO Tergesen and PO Swicki were holding his arms and seemed to be struggling to restrain him. There were about five or six people present, who were yelling at the police.

PO Siciliano, PO Pellingra and PO Daniel exited the van. PO Tergesen and PO Swicki brought § 87(2)(b) to the van

At the rear side door, § 87(2)(b) spun around, and kicked and spit at PO Tergesen, in that order, striking him in the leg with his foot and spitting on his face. § 87(2)(b) was also yelling unknown statements, while PO Tergesen told him to get in the van. After five to ten seconds, the officers placed § 87(2)(b) in the van. No officers used profanity.

PO Siciliano, PO Pellingra and PO Daniel returned to the van. PO Tergesen went to the stationhouse in another vehicle. During the ride to the police station, § 87(2)(b) continued to scream, though he calmed down a bit by the time they had arrived. They parked behind the stationhouse, where prisoners are usually unloaded. No one else was there. § 87(2)(b) was told to step out and refused both verbally and physically. PO Tergesen pulled § 87(2)(b) from the car, consistent with PO Tergesen's testimony. PO Siciliano did not touch him, but stood near the passenger side of the car, the side on which § 87(2)(b) exited. No officer struck § 87(2)(b) at any time. § 87(2)(b) was brought inside and PO Siciliano resumed patrol.

Witness Officer: PO DAVID PELLINGRA

- *PO Pellingra is a § 87(2)(b)-old white male standing 5'9" and weighing 175 pounds, with black hair and brown eyes.*
- *On the incident date, he worked from 11:30 a.m. to 8:05 p.m., assigned to patrol in a marked van with PO Daniel and PO Siciliano. He was dressed in uniform.*

Memo Book (encl. 18)

PO Pellingra's memo book indicated only that he responded to a request for assistance at Van Siclen and Hegeman Avenues, at 3:35 p.m.

CCRB Testimony (encl. 19)

PO Pellingra was interviewed at the CCRB on August 24, 2009. His testimony was substantively consistent with PO Siciliano's statement.

Witness Officer: PO AVION DANIEL

- *PO Daniel is a § 87(2)(b)-old black female standing 5'6" and weighing 130 with black hair and brown eyes.*
- *On the incident date, she worked from 11:30 a.m. to 8:05 p.m., assigned to patrol in a marked van with PO Pellingra and PO Siciliano. She was dressed in uniform.*

Memo Book (encl. 20)

PO Daniel's memo book indicated only that she responded to a request for assistance at Van Siclen and Hegeman Avenues, at 3:35 p.m.

CCRB Testimony (encl. 21)

PO Daniel was interviewed at the CCRB on August 14, 2009. Her testimony was substantively consistent with PO Siciliano's statement.

Witness Officer: SGT. THOMAS ORMOND

- *Sgt. Ormond is a § 87(2)(b)-old white male standing 5'9" and weighing 180 pounds, with blonde hair and blue eyes.*
- *On the incident date, he worked from 11:15 a.m. to 8:12 p.m., as the patrol sergeant in the 75th Precinct. He was partnered with PO Christopher Dalto, dressed in uniform, and assigned a marked patrol car.*

Memo Book (encl. 22)

Sgt. Ormond's memo book indicates that his tour ended at 9:12 p.m., and he claimed one hour of overtime, due to PO Tergesen's line of duty injury.

Line of Duty Paperwork (encl. 14)

Sgt. Ormond prepared PO Tergesen's line of duty injury report. He noted that while

making a lawful arrest, PO Tergesen was kicked by § 87(2)(b) several times in his right leg, causing a contusion, while attempting to place him in a department vehicle. § 87(2)(b) also spit on the right side of PO Tergesen's face.

CCRB Testimony (encl. 23)

Sgt. Ormond was interviewed at the CCRB on August 27, 2009.

Sgt. Ormond responded to a request for backup at Van Siclen and Hegeman Avenues. When he arrived, § 87(2)(b) had already been placed in a van. § 87(2)(b) was screaming and yelling in the van but the situation seemed to be under control. Sgt. Ormond approved the arrest after officers informed him of its circumstances but no longer recalled what happened.

Sgt. Ormond then returned to the stationhouse. When he arrived, several officers he could not identify were trying to remove § 87(2)(b) from the van. § 87(2)(b) was refusing to get out of the vehicle. Sgt. Ormond did not participate in removing § 87(2)(b) but had a clear view of the events through the van's front door. He never saw an officer hold § 87(2)(b)'s head down or strike him. The officers only were pulling on § 87(2)(b)'s legs. § 87(2)(b) became more compliant after he was removed from the van. Sgt. Ormond never learned that § 87(2)(b) was hurt or injured or heard an allegation that he was struck. Later, Sgt. Ormond filled out line of duty paperwork for PO Tergesen, who informed him that he was spit on by § 87(2)(b).

NYPD Documents:

Roll Call (encl. 28)

The roll call confirms the following assignments: PO Tergesen and PO Swickicki were assigned to impact footpost #5. Sgt. Ormond was the field training supervisor, with PO Dalto as his operator. PO Siciliano was assigned to impact training auto, in a vehicle numbered 5480, to which only PO Pellingra and PO Daniel were also assigned.

Command Log (encl. 26)

§ 87(2)(b)'s arrest is entered in the command log at 3:50 p.m. His condition is noted as "apparently normal." He was transported to Brooklyn Central Booking at an unspecified time.

Medical Treatment of Prisoner Form Requests (encl. 36B and 36F)

According to requests from the 75th Precinct and the Brooklyn Court Section, no medical treatment of prisoner form was on file for § 87(2)(b).

Other Evidence:

Arrest History of § 87(2)(b) (encl. 30)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Arrest for Incident and Disposition (encl. 31)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian's Criminal History (encl. 33)

- § 87(2)(b)

Civilians' CCRB History (encl. 1E)

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b)

Subject Officers' CCRB History (encl. 1A-D)

- PO Tergesen has been a member of service for two years and there are no substantiated CCRB allegations against him.
- PO Swicki has been a member of service for one year and there are no substantiated CCRB allegations against him.
- PO Siciliano has been a member of service for seven years and there are no substantiated CCRB allegations against him.

Conclusion

Identification of Subject Officers

§ 87(2)(b) obtained PO Tergesen's name from his uniform at the time of the incident. He correctly indicated PO Swicki was taller than PO Tergesen. He correctly indicated that PO Tergesen was the officer whom he allegedly spit on. § 87(2)(g)

§ 87(2)(b) alleged that the officer driving the van was the one who punched him repeatedly outside the stationhouse. Police testimony establishes this was PO Siciliano.

Investigative Findings and Recommendations

Allegation A – Abuse of Authority: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen stopped § 87(2)(b)

Allegation B – Abuse of Authority: At Van Siclen and Hegeman Avenues in Brooklyn, PO Thomas Swicki stopped § 87(2)(b)

PO Tergesen and PO Swicki gave almost entirely divergent explanations for why they approached § 87(2)(b) or suspected him of any criminal activity. PO Swicki indicated that § 87(2)(b) was seen standing around with a group of people, only one of whom, § 87(2)(b) he could identify, or for whom he could specify any specific criminal history. He cited this as well as § 87(2)(b)'s entering and exiting of § 87(2)(b) as reasons for suspecting § 87(2)(b) of wrongdoing. He could not articulate, however, specifically what crime he suspected § 87(2)(b) of having committed, other than vaguely indicating he might be involved with weapons or drugs. He indicated that § 87(2)(b) entered the store before the officers approached him, and that his actions in the store were also suspicious, in that he was pacing and possibly biding his time until the officers left.

PO Tergesen stated that § 87(2)(b) made a suspicious motion adjusting a bulge on his right pants pocket, which he could not describe in much detail other than indicating that it looked like a gun. This suspicion did not in any way arise from § 87(2)(b)'s associating with known criminals, and PO Tergesen specifically said he had no memory of § 87(2)(b) interacting with anyone else on the street. PO Tergesen alleged that the officers approached § 87(2)(b) on the street, and that PO Tergesen asked § 87(2)(b) what he had in his pocket, in response to which § 87(2)(b) immediately went inside the store.

§ 87(2)(g)

They both indicated that the officers first approached § 87(2)(b) after § 87(2)(b) was inside the store. They both indicated that § 87(2)(b) himself opened the door to the store, and not § 87(2)(b). On the other hand, § 87(2)(b) indicated that he went straight from his home into the restaurant, and did not interact

with anyone on the street. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Discourtesy: At Van Siclen and Hegeman Avenues in Brooklyn, PO William Tergesen spoke obscenely and/or rudely to § 87(2)(b)

§ 87(2)(g)

Allegation D – Force: Outside the 75th Precinct stationhouse, PO David Siciliano used physical force against § 87(2)(b)

Allegation E – Force: Outside the 75th Precinct stationhouse, PO William Tergesen used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Siciliano repeatedly and gratuitously punched him in the head in the rear of the van in retaliation for § 87(2)(b) spitting on PO Tergesen. § 87(2)(g)

Team: _____

:

Investigator: _____
Signature _____ Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____